

October 11, 2000

Loopholes in Drug Importation Bill

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The drug importation language adopted in the Agriculture Appropriations conference fails to meet its goal of lowering prescription drug costs to seniors and other American consumers. While the provision pays lip service to the high prescription drug costs in the United States, in reality the GOP-crafted importation plan will do nothing to lower drug prices. The legislation contains loopholes that render the bill meaningless. It gives drug companies the ability to choke off the supply of low-price foreign drugs to U.S. consumers.

In the Agriculture Appropriation conference, Democrats sought to close the bill's loopholes, but these efforts were defeated.

Price Discrimination against U.S. Importers. The conference language allows drug manufacturers and their intermediaries to price discriminate against U.S. pharmacies and importers. Under the bill, it is legal for drug companies to require their foreign distributors to charge U.S. importers more than foreign purchasers. These discriminatory contract terms will defeat the whole purpose of the legislation.

During the conference, Rep. Hinchey offered an amendment to ensure a level playing field. The amendment would have prohibited drug companies from discriminating against U.S. importers and would have ensured that U.S. importers could purchase drugs on the same terms and conditions as foreign purchasers. The amendment was rejected on a party line vote (9 to 6).

Foreign Labels. The conference language allows drug manufacturers to frustrate the intent of the legislation through the labeling of their products. Since drug labels in foreign countries frequently do not meet FDA labeling requirements, the drugs must be relabeled before they can be imported. Since the drug companies are the only ones who have the rights to the labels, the companies will continue to be the only ones able to import the drugs into the United States.

During the conference, Rep. DeLauro offered an amendment that would have required drug manufacturers to provide U.S. importers written authorization to use the FDA-

approved label. This amendment was rejected on a party line vote (9 to 6).

Other Loopholes. The conference report contains other loopholes. For example, the language limits the number of countries from which drugs may be imported to developed nations, such as the European Union and Canada. Many countries, such as Mexico, are excluded without special designations from HHS. In addition, the bill's provisions are designed to have only a short shelf life. Because of the five year sunset, the bill discourages the private sector from developing the infrastructure necessary to create a cost-effective importation system.

During the conference, Democratic amendments offered by Reps. Farr and Kaptur to close these loopholes were also rejected.